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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,234	08/13/2001	Stephen F. Gass	SDT 310	8814
27630	7590	05/03/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/929,234

Applicant(s)

GASS ET AL.

Examiner

Boyer D. Ashley

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-7 and 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-11 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/7/04 2/12/04</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS- 2/13/04 11/21/03</u>              |

## **DETAILED ACTION**

1. This office action is in response to applicant's amendment filed 2/5/04, wherein claims 1, 8, 18, 19, and 20 were amended. Claims 1-20 remain pending with claims 2-7 and 12-15 remaining withdrawn as being drawn to a non-elected invention.

### ***Priority***

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 120 and 119(e). See 37 CFR. 1.78

### **Information Disclosure Statement**

3. It should be noted that the IDS filed 2/17/04 appears to be a duplicate of the IDS filed 2/12/04.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney, or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 8-11, 16-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 09/929,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in claim terminology used but encompass the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Friemann et al., U.S. Patent 3,858,095.

As to claim 17, Friemann et al. discloses the same invention as claimed including: a working portion (band cutter, e.g., see abstract) capable of working when moving; a motor (see column 2, lines 5-20) to move the working portion; a detection

system (e.g., bridge circuit 3, 9, 12) capable of detecting a dangerous condition between a person and the working portion by imparting an electric signal to the working portion and monitoring the electric signal for at least one change indicative of the dangerous condition; and a reaction system (e.g. 4, column 2, lines 5-23) associated with the detection system to cause a predetermined action to take place relative to the workpiece position upon detection of the dangerous condition during a defined period of time after the motor has been turned off (within 1/100<sup>th</sup> second, see column 4, lines 1-10).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 18 is rejected under 35 U.S.C. 102(b) as anticipated by Lokey or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lokey, U.S. patent 3,785,230.

As to claim 18, Lokey discloses the same invention as claimed including: a cutting tool (13); a motor (11) to spin the cutting tool; a detection system (15,16) capable of detecting a dangerous condition between a person and the cutting tool by imparting an electric signal to the cutting tool and monitoring the electric signal for at least one change indicative of the dangerous condition; a brake system (21,24) capable of engaging and stopping the cutting tool when the detection system detects the dangerous condition between the person the cutting tool; and a control system (8,19)

capable of monitoring the detection system and controlling actuation of the brake system, where the control system is adapted to trigger the brake system if the dangerous condition is detected during coast-down of the cutting tool after the motor is turned off.

In the alternative, even if it is argued that the device of Lokey is not capable of braking the motor during a coast-down period, the examiner takes official notice that it is old and well known in the art that cutting blades are just as dangerous during the coast-down period as the fully powered period. It would have been obvious to one of ordinary skill in the art to have the braking device of Lokey function during a coast-down period for the purpose of preventing injury to the user.

#### ***Response to Arguments***

10. Applicant's arguments with respect to the above claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

BDA  
April 23, 2004